LOW AH KEE v. REGINA

[A. Cr. J. (Rose C.J.) October 16, 1959]

[Singapore — Magistrate's Appeal No. 15 of 1959]

Criminal Law and Procedure — Forfeiture of taxicab — Taxicab let on hire — Vehicle being used in the commission of offence contrary to the Customs Ordinance (Cap. 160), s.104(1)(c).

The appellant complained of an order of forfeiture made by the Magistrate with regard to a taxicab of which he is the owner. The taxicab in question was let out to one or two drivers on normal terms of hire, and one of these drivers was found in possession of a considerable quantity of "uncustomed" cigarettes, which were inside the taxicab. The appellant did not know of the improper use to which his cab was being put.

Held: forfeiture cases must depend upon their particular facts. In the present case a considerable bulk of cigarettes was being carried, and therefore it was a reasonable conclusion on the part of the Magistrate that the vehicle in question was being used in the commission of the offence in question, whether it was one of being in possession of or of conveying uncustomed goods.

MAGISTRATE'S APPEAL.

A. P. Rajah for the appellant.

A. V. Winslow (Solicitor General) for the respondent.

Rose C.J.: The appellant complains of an order of forfeiture made by the 8th Magistrate's Court with regard to a taxicab of which he is the owner.

The appellant was in the habit of letting out his taxicab to one or two drivers on normal terms of hire. One of these drivers was found in possession of a considerable quantity of "uncustomed" cigarettes, which were inside the taxicab in question.

It is conceded that the appellant did not know of the improper use to which his cab was being put. Learned counsel for the appellant contends that in view of the learned Magistrate's finding in paragraph 4 of his Grounds of Decision that "The Court is satisfied from the evidence adduced . . . . . that an offence under section 104(1)(c) of the Customs Ordinance has been committed and that taxi S.H. 1935 was used in the commission of such offence" the vehicle should not be forfeited for the reason that the taxi was not used "in the commission" of the offence of being in possession of the cigarettes.

It may well be that the evidence adduced before the Magistrate would have been more appropriately considered to fall under section 104(1)(d) which relates to "conveying" uncustomed goods.

Be that as it may, it seems to me that having regard to the facts of this particular case — and all these forfeiture cases must depend upon their particular facts — it was apparent that transport of some kind, such as a motor car, was essential for the purposes upon which the convicted man was engaged. There may well be cases in which, for example, a small uncustomed object is being conveyed in which the fact that it is found in a motor car would be immaterial, as a car would not have been necessary for the commission of the offence and it might therefore reasonably be considered that the car was not being used for the commission of the offence. In the present case, however, where a considerable bulk of cigarettes was being carried, it seems to me to be a reasonable conclusion on the part of the learned Magistrate that the vehicle in question was being used in the commission of the offence in question, whether it was one of being in possession of or of conveying uncustomed goods.

This seems to me to be sufficient to determine the appeal, which must be dismissed.

Appeal dismissed.

Solicitors: *Tan, Rajah & Cheah.*

ANG HIAN & ORS. v. REGINA

[A. Cr. J. (Rose C.J.) October 16, 1959]

[Singapore — Magistrate's Appeal Nos. 131 & 132 of 1959]

Dangerous Drugs — Consumption of prepared opium — Dangerous Drugs Ordinance (Cap. 137), s.10(2)(b) — Interpretation.

In this case the appellants were charged with being found in a place used for the purpose of smoking prepared opium contra section 10(2)(b) of the Dangerous Drugs Ordinance. The sub-section reads: "If any person smokes or otherwise consumes prepared opium or frequents any place or places used for the purpose of smoking or otherwise consuming prepared opium, he shall be guilty of an offence . . . ."

Held: section 10(2)(b) must be interpreted to mean that the place in question must have been contemporaneously or currently used for smoking or otherwise consuming prepared opium.

MAGISTRATE'S APPEAL.

E. W. Barker for the 1st appellant.

D. G. Osborne-Jones for the 2nd appellant.

M. Karthigesu for the 3rd appellant.

A. V. Winslow (Solicitor General) for the respondent.

Rose C.J.: The learned Solicitor General conceded that the convictions of the three appellants could not be upheld.

The three appellants were charged with being found in a place used for the purpose of smoking prepared opium, contra section 10(2)(b) of the Dangerous Drugs Ordinance.

The facts, which were not substantially in dispute, were that the three appellants were found in the room in question in circumstances which were not personally incriminating. In the room an opium pipe was found, not conspicuously placed, as also were a few other implements which are appropriate for opium smoking. There was no evidence of anyone having recently smoked in the room. Indeed, such evidence as there was would lead one to a contrary inference.

It is sufficient to decide this case upon a single point, namely, that section 10(2)(b) of the Ordinance must, in my opinion, be interpreted to mean that the place in question must have